

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SHARIFF BUTLER,

Plaintiff,

v.

JOHN E. WETZEL, *et al.*,

Defendants.

No. 4:23-CV-00859

(Chief Judge Brann)

ORDER

AND NOW, this 1st day of March 2024, in accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED** that:

1. Defendants' unopposed motion to dismiss (Doc. 24) under Federal Rule of Civil Procedure 12(b)(6) is **GRANTED** in part and **DENIED** in part, as follows:
 - a. Plaintiff's Eighth Amendment conditions-of-confinement claims against defendants John E. Wetzel, C. Kendrick, and Jennifer Jenkins are **DISMISSED** without prejudice pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.
 - b. Plaintiff's Eighth Amendment conditions-of-confinement claims against defendants George Ralston, Dorina Varner, Keri Moore, and Pennsylvania Department of Labor and Industry are **DISMISSED** with prejudice pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.
 - c. Plaintiff's Fourteenth Amendment equal protection claims against defendants John E. Wetzel, C. Kendrick, Jennifer Jenkins, Kevin Kauffman, and Anthony Scalia are **DISMISSED** without prejudice pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

- d. Plaintiff's Fourteenth Amendment equal protection claims against defendants George Ralston, Dorina Varner, Keri Moore, and Pennsylvania Department of Labor and Industry are **DISMISSED** with prejudice pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.
 - e. Plaintiff's Section 1983 civil conspiracy claims against defendants John E. Wetzel, C. Kendrick, Jennifer Jenkins, Kevin Kauffman, and Anthony Scalia are **DISMISSED** without prejudice pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.
 - f. Plaintiff's Section 1983 civil conspiracy claims against defendants George Ralston, Dorina Varner, Keri Moore, and Pennsylvania Department of Labor and Industry are **DISMISSED** with prejudice pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.
 - g. Plaintiff's state-law negligence claims are **DISMISSED** as to all Defendants as they are barred by state statutory sovereign immunity. These claims may not be reasserted in any amended pleading in this action.
 - h. Defendants' motion is **DENIED** in all other respects.
- 2. The Clerk of Court is directed to terminate defendants George Ralston, Dorina Varner, Keri Moore, and Pennsylvania Department of Labor and Industry.
 - 3. Within **21 days** of the date of this Order, Plaintiff, if desired, may file a second amended complaint in accordance with the accompanying Memorandum. Plaintiff is admonished that he must follow this Court's directives with respect to amendment.

4. If no second amended complaint is timely filed, dismissal without prejudice of the conditions-of-confinement, equal protection, and civil conspiracy claims will automatically convert to dismissal *with prejudice* and this case will proceed on Butler's Eighth Amendment conditions-of-confinement claims against defendants Kevin Kauffman and Anthony Scalia only.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

Chief United States District Judge